

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARELL RICHARDS,

Defendant.

**8:13CR371**

**MEMORANDUM AND ORDER**

This matter is before the court on the defendant's motion to vacate, set aside, or correct his sentence under [28 U.S.C. § 2255](#), [Filing No. 63](#). The defendant seeks relief under [Johnson v. United States](#), 135 S. Ct. 2551 (2015). In *Johnson*, the Supreme Court invalidated a clause of the Armed Career Criminal Act of 1984 ("ACCA")<sup>1</sup> that defined "violent felony" as a crime that "involves conduct that presents a serious potential risk of physical injury to another" as unconstitutionally vague in violation of due process of law. *Id.* at 2557.

The court has reviewed the record and finds *Johnson* has no application to this case. The defendant was charged with and convicted of being a felon in possession of a firearm in violation of [18 U.S.C. § 922\(g\)](#). He entered into a plea agreement acknowledging that the penalty for the violation was zero to ten years. See [Filing No. 23](#), Petition to Enter a Plea of Guilty at 4. The record reflects that Richards's sentence was not enhanced under the ACCA, nor did he receive a career offender enhancement under the United States Sentencing Guidelines, [U.S.S.G. § 4B1.1](#). See [Filing No. 38](#),

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<sup>1</sup> Under the ACCA, a defendant convicted of being a felon in possession of a firearm faced a mandatory minimum sentence of fifteen years if he had three or more previous convictions for a "violent felony." [18 U.S.C. § 924\(e\)\(2\)\(B\)](#) ("the residual clause").

Memorandum and Order. This court sustained the defendant's objections to the Revised Presentence Investigation Report's conclusion that he was a career offender and its findings that two of his prior convictions were "violent felonies" and could be used to elevate his sentence under the ACCA. *Id.* at 30-36. The court found the defendant's prior convictions for flight to avoid arrest and burglary under Nebraska law did not qualify as ACCA offenses under the clause later invalidated in *Johnson*. *Id.* at 33; see also [Filing No. 44](#), Statement of Reasons (sealed) at 1 (stating "[p]ursuant to the Court's findings that the defendant does not qualify as an Armed Career Criminal, the enhancement pursuant to 4B1.4 does not apply"); [Filing No. 41](#), Presentence Investigation Report at 16-17. The government's appeal of that order was dismissed on the government's motion. [Filing No. 46](#), Notice of Appeal; [Filing No. 61](#), Eighth Circuit Court of Appeals Judgment. Because Richards was not sentenced as a career offender, the Supreme Court's holding in *Johnson* does not affect his sentence. Accordingly,

IT IS HEREBY ORDERED that:

1. The defendant's motion to vacate, set aside, or correct his sentence under [28 U.S.C. § 2255](#) ([Filing No. 63](#)) is denied.
2. A judgment in conformity with this Memorandum and Order will issue this date.

DATED this 27th day of May, 2016.

BY THE COURT:

s/ Joseph F. Bataillon  
Senior United States District Judge